

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

GROUP 1 AUTOMOTIVE, INC. AND
GPI MS-N, INC. D/B/A PAT PECK NISSAN

PLAINTIFFS

VERSUS

CIVIL ACTION NO.: 1:14cv334HSO-JCG

ACE AMERICAN INSURANCE COMPANY
AND ARTHUR J. GALLAGHER RISK
MANAGEMENT SERVICES, INC.

DEFENDANTS

MOTION TO LIFT STAY AND DISMISS
DEFENDANT ACE AMERICAN INSURANCE COMPANY WITH PREJUDICE

COME NOW, Plaintiffs Group 1 Automotive, Inc. and GPI MS-N, Inc. d/b/a Pat Peck Nissan by and through their counsel of record and file this their Motion to Lift Stay and Dismiss Defendant ACE American Insurance Company with Prejudice, and in support thereof would show unto the Court the following, to-wit:

1. Plaintiff Group 1 Automotive, Inc. ("Group 1") is the corporate parent of Plaintiff GPI MS-N, Inc., a corporate subsidiary of Group 1 which operates the automobile dealership better known as Pat Peck Nissan in Gulfport, Mississippi. Defendant ACE American Insurance Company ("ACE") issued a policy of garage liability insurance to Group 1 and Pat Peck, which was to include, *inter alia*, a customer limitation of liability provision which limited Pat Peck's liability for customers to an amount not greater than was necessary to comply with state mandatory-minimum liability coverage laws. Defendant Arthur J. Gallagher Risk

Management Services, Inc. ("Arthur J. Gallagher") served as Group 1 and Pat Peck's insurance broker in its dealings with ACE leading up to the issuance of the garage liability insurance policy.

2. On May 21, 2007, Nathaniel Fortson ("Fortson") purchased a Nissan Altima from Pat Peck and was subsequently involved in an automobile accident with Donna Ray ("Ray"). Ray filed suit against Fortson, Group 1 and Pat Peck, and ultimately obtained a Consent Judgment against Fortson for \$557,291. Ray subsequently filed a declaratory judgment action against Group 1, Pat Peck and ACE in Harrison County Circuit Court and on November 25, 2013, the Circuit Court entered an Order granting summary judgment in favor of Ray ruling that Pat Peck still owned the vehicle, that Fortson was an insured under the ACE Garage Policy and that the limitation of customer liability provision in the ACE Garage Policy did not apply. Group 1, Pat Peck and ACE timely appealed the Circuit Court's judgment to the Mississippi Supreme Court.

3. On July 25, 2014, Group 1 and Pat Peck filed the subject lawsuit against ACE and Arthur J. Gallagher and alleged that each was liable to the Plaintiffs for failing to ensure that the ACE garage liability insurance policy included an enforceable limitation of customer liability provision.

4. On October 6, 2014, ACE American filed a Motion to Dismiss Pursuant to Rule 12(b)(1) [Doc. 8], which was joined by Arthur J. Gallagher [Doc. 11], alleging that the subject lawsuit was not ripe

for adjudication given that the Harrison County Circuit Court's ruling had been appealed and was not yet final. Alternatively, ACE American requested that the Court stay this case pending resolution of the underlying appeal.

5. On February 23, 2015, the Court entered an Agreed Order Staying Case [Doc. 17]. The parties were further instructed to notify the Court within ten (10) days of a ruling by the Mississippi Supreme Court on the underlying appeal.

6. Thereafter, the parties mediated the underlying lawsuit and reached a settlement of Ray's claim for personal injury as well as a settlement of Group 1 and Pat Peck's claims against ACE in the subject lawsuit. However, Group 1 and Pat Peck were unable to resolve their claims against Arthur J. Gallagher. Accordingly, the Plaintiffs and ACE American filed a Joint Motion to Dismiss Appeal which was granted by the Mississippi Supreme Court on April 30, 2015, and received by the parties on May 8, 2015. See Order attached hereto as Exhibit "A".

7. At this time, the underlying appeal has been dismissed with prejudice, and thus Group 1 and Pat Peck's claims against Arthur J. Gallagher are ripe for adjudication. Accordingly, the Plaintiffs hereby move the Court to lift the Stay entered in this cause and return this case to the active docket.

8. In light of the fact that the Plaintiffs and ACE American have reached a full and final settlement of all claims between

them, Group 1 and Pat Peck hereby further move the Court to dismiss their claims against ACE American with prejudice, with each party to bear their own costs.

WHEREFORE, PREMISES CONSIDERED, the Plaintiffs Group 1 Automotive, Inc. and GPI MS-N, Inc. pray that the Court grant their Motion to Lift Stay so that they may proceed with their claims against Defendant Arthur J. Gallagher, and that the Court dismiss their claims against Defendant ACE American Insurance Company with prejudice, with each party to bear its own costs.

RESPECTFULLY SUBMITTED, this the 14th day of May, 2015.

PLAINTIFFS GROUP 1 AUTOMOTIVE, INC.,
AND GPI, MS-N, INC.,

BY: FRANKE & SALLOUM, PLLC

BY: s/ Fredrick B. Feeney, II
FREDRICK B. FEENEY, II
MS BAR No. 5168

FRANKE & SALLOUM, PLLC
ATTORNEYS AT LAW
POST OFFICE DRAWER 460
GULFPORT, MS 39502
TELEPHONE: (228) 868-7070
FACSIMILE: (228) 868-7090
fbf@frslaw.com

CERTIFICATE OF SERVICE

I, Fredrick B. Feeney, II, attorney for the Appellants, Group 1 Automotive, Inc. and GPI MS-N, Inc., certify that I have this day electronically filed this Motion to Lift Stay and Dismiss ACE American Insurance Company with Prejudice which sent notifications of such filing to all counsel of record.

This the 14th day of May, 2015.

s/ Fredrick B. Feeney, II
FREDRICK B. FEENEY, II
STATE BAR NO. 5168

FRANKE & SALLOUM, PLLC
ATTORNEYS AT LAW
POST OFFICE DRAWER 460
GULFPORT, MS 39502
TELEPHONE: (228) 868-7070
FACSIMILE: (228) 868-7090
fbf@frslaw.com